

# **Board of Parole Hearings**

## **Rulemaking Action BPH RN 23-01**

### **TEXT OF PROPOSED REGULATIONS**

Proposed changes are indicated by underline and deletions are indicated by ~~strikethrough~~.

#### **California Code of Regulations**

#### **Title 15. Crime Prevention and Corrections**

#### **Division 2. Board of Parole Hearings**

#### **Chapter 1. General**

#### **Article 6. Proceedings Conducted in Person and by Videoconference**

**Sections 2050 through 2055 are unchanged.**

**Section 2056 (Special Circumstances) is amended to read:**

If an inmate is scheduled for an in-person proceeding, and exigent circumstances, such as natural disasters or a state of emergency, or circumstances beyond the control of the board, such as the inmate's housing location, prevent conducting the proceeding in person, the board shall allow the inmate, upon recommendation from their attorney, to attend the proceeding by videoconference. All other participants may attend the proceeding by videoconference. The ~~panel~~hearing officers shall determine whether to continue the proceeding in accordance with paragraph (1) of subsection (e) of section 2253 of this division. Nothing in this section shall prohibit or limit the board's ability to postpone the proceeding under subsection (d) of section 2253 of this division.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.6, Penal Code.

**Section 2057 (Participation at Parole Hearings and Medical Parole Hearings) is amended to read:**

(a) Whether a hearing is conducted in person or by videoconference, the inmate's attorney and the interpreter shall be physically present with the inmate during the hearing unless any of the following applies:

- (1) The inmate waives the physical presence of their attorney;
- (2) The inmate waives their own right to attend the hearing;
- (3) The inmate refuses to attend the hearing;
- (4) The board determines that the interpreter shall attend the hearing by videoconference due to the interpreter's remote location or availability; or
- (5) Circumstances beyond the control of the inmate's attorney or the interpreter, such as the inmate's medical condition or the housing location, prevent the attorney or the interpreter from being physically present with the inmate during the hearing.

(b) **Hearings Conducted In Person.** If the board determines that the hearing shall be conducted in person, as determined in section 2054 of this division, then the inmate, the inmate's attorney, and

the interpreter shall be physically present with the inmate during the hearing, unless one of the exceptions in subsection (a) applies. The following individuals may attend in person, by videoconference, or by telephone:

(1) Any victim appearing personally or by counsel, victim's next of kin appearing personally or by counsel, victim's family member appearing personally or by counsel, designated representative of a victim or victim's next of kin appearing personally or by counsel, and support person for a victim, victim's next of kin, or victim's family member ~~victim's designated representative appearing personally or by counsel, and victim's support person~~ provided that person has informed the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing at least 15 days prior to the hearing;

~~(2) Any victim's next of kin appearing personally or by counsel, designated representative of a victim's next of kin appearing personally or by counsel, and support person for a victim's next of kin provided that person has informed the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing at least 30 days prior to the hearing;~~

~~(3) Any victim's family member appearing personally or by counsel and support person for the victim's family member provided that person has informed the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing at least 30 days prior to the hearing;~~

(24) A staff member from the department's Office of Victim and Survivor Rights and Services to act as a support person, if requested by a victim, victim's next of kin, or victim's family member;

~~(3) An institution's classification and parole representative assigned as the victim service representative;~~

~~(45)~~ A representative of the prosecuting agency;

~~(56)~~ Witnesses called to testify at rescission hearings; and

~~(67)~~ Visitors and observers approved under section 2029.1 of this division.

(c) Hearings Conducted by Videoconference. If the board determines that the hearing shall be conducted by videoconference, as determined in sections 2053, 2054, 2055, and 2056 of this division, then the inmate, the inmate's attorney, and the interpreter shall be physically present with the inmate during the hearing, unless one of the exceptions in subsection (a) applies. The following individuals may attend the hearing by videoconference or by telephone:

(1) Any victim appearing personally or by counsel, victim's next of kin appearing personally or by counsel, victim's family member appearing personally or by counsel, designated representative of a victim or victim's next of kin appearing personally or by counsel, and support person for a victim, victim's next of kin, or victim's family member ~~victim's designated representative appearing personally or by counsel, and victim's support person~~ provided that person has informed the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing at least 15 days prior to the hearing;

~~(2) Any victim's next of kin appearing personally or by counsel, designated representative of a victim's next of kin appearing personally or by counsel, and support person for a victim's next of kin provided that person has informed the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing at least 30 days prior to the hearing;~~

~~(3) Any victim's family member appearing personally or by counsel and support person for the victim's family member provided that person has informed the department's Office of Victim and Survivor Rights and Services at least 30 days prior to the hearing;~~

(24) A staff member from the department's Office of Victim and Survivor Rights and Services to

act as a support person, if requested by a victim, victim's next of kin, or victim's family member;  
(3) An institution's classification and parole representative assigned as the victim service representative;

~~(45)~~ Representatives of the prosecuting agency;

~~(56)~~ Witnesses called to testify at rescission hearings; and

~~(67)~~ Visitors and observers approved under section 2029.1 of this division.

(d) In lieu of attending the hearing, victims, victim's next of kin, members of the victim's family, and victim representatives may submit a written or electronically recorded statement in accordance with section 2029 of this division to be considered by the hearing officers.

(e) Media representatives approved under sections 2031 and 2032 of this division shall attend the hearing in a manner approved by the board, which may include in person, by videoconference, or by telephone. Media representatives shall only attend in person if the hearing is conducted in person.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3000, 3000.1, 3041.1, 3041.5, 3041.6, 3041.7, 3043, 3043.2 and 3043.25, Penal Code.

**Section 2058 (Participation at Hearings for Offenders with Mental Health Disorders) is amended to read:**

(a) Hearings for offenders with mental health disorders shall be conducted in person unless circumstances in subsection (b) apply.

(b) If a parolee is scheduled for an in-person hearing and exigent circumstances, such as natural disasters or a state of emergency, or circumstances beyond the control of the board, such as the inmate's-parolee's housing location, prevent conducting the proceeding in person, the board shall conduct the hearing by videoconference, if available. If videoconference is not available, the board shall conduct the hearing by telephone.

(c) The parolee's attorney and the interpreter shall be physically present with the parolee during the hearing unless any of the following applies:

(1) The parolee waives their own right to attend the proceeding, upon consulting with their attorney;

(2) The parolee refuses to attend the proceeding;

(3) The board determines that the interpreter shall attend by videoconference due to the interpreter's remote location or availability; or

(4) Exigent circumstances or circumstances beyond the control of the parolee's attorney or the interpreter as outlined in subsection (b) prevent the attorney or the interpreter from being physically present with the parolee during the proceeding.

(d) Hearing participants other than the hearing officer, the parolee, the parolee's attorney, and the interpreter may attend the hearing in the following manner:

(1) For hearings conducted in person, they may attend in person, by videoconference if available, or by telephone if available;

- (2) For hearings conducted by videoconference, they may attend by videoconference or by telephone;
- (3) For hearings conducted by telephone, they may attend by telephone.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 2964, 2966 and 3041, Penal Code.

**Sections 2059 through 2062 are unchanged.**

**Section 2063 (Equipment and Connectivity Issues) is amended to read:**

- (a) Participants are responsible for ensuring that they have the proper equipment and internet connection for their successful attendance and participation at the proceeding.
- (b) ~~Panels~~ Hearing officers are not required to continue or postpone a hearing due to a participant's equipment or connectivity issue but may continue or postpone a hearing in accordance with subsections (d) and (e) of section 2253 of this division. The hearing officers shall review any statements submitted under section 2029 of this division and sections 3041.7 and 3043.2 of the Penal Code in accordance with paragraph (1) of subdivision (a) of section 3041.5 of the Penal Code.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.6, Penal Code.

**Section 2064 is unchanged.**